

**DIRECT TESTIMONY OF STEVEN J. LEVITAS  
ON BEHALF OF  
THE SOUTH CAROLINA SOLAR BUSINESS ALLIANCE**

**EXHIBIT SJL-11**

## COMPETITIVE PROCUREMENT OF RENEWABLE ENERGY GUIDELINES.

### (a) Definitions.

- (1) "Affiliate" means an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the specified entity.
- (2) "Avoided cost rates" – means an electrical utility's calculation of its long-term, levelized avoided energy and capacity costs utilizing the methodology most recently approved or established by the Commission as of 30 days prior to the date of the electrical utility's upcoming Competitive Solicitation for purchases of electricity from qualifying facilities pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended. The electrical utility's avoided cost rates shall be used for purposes of determining the cost effectiveness of renewable energy resources procured through a Competitive Solicitation. With respect to each Competitive Solicitation, the electrical utility's avoided costs shall be calculated over the time period of the utility's pro forma contract(s) approved by the Commission.
- (3) "Competitive Solicitation Program Methodology" means the methodology used to evaluate all proposals received in a given Competitive Solicitation.
- (4) "Competitive Solicitation" means a request for proposal solicitation process to be followed by an electrical utility under these guidelines for the competitive procurement of renewable energy resources.
- (5) "Electrical utility" means an electrical utility that is required to conduct a competitive solicitation pursuant to these guidelines.
- (6) "Evaluation Team" means employees and agents of an electrical utility that will be evaluating proposals submitted in response to the Competitive Solicitation, including those acting for or on behalf of the electrical utility regarding any aspect of the Competitive Solicitation evaluation or selection process.
- (7) "IA Website" means the website established and maintained by the Independent Administrator as required by subsection (d)(7) of these guidelines.
- (8) "Independent Administrator" means the third-party entity to be approved by the Commission that is responsible for independently administering Competitive Solicitation Programs in accordance with these guidelines, developing and publishing the Competitive Solicitation Methodology, and for ensuring that all responses to a Competitive Solicitation are treated equitably.
- (9) "Market Participant" means a person who has expressed interest in submitting a proposal in response to a Competitive Solicitation or has submitted such a proposal, including, unless the context requires otherwise, an Affiliate or an electrical utility, through its Proposal Team.
- (10) "Proposal Team" means employees and agents of an electrical utility or an Affiliate that proposes to meet a portion of its Competitive Solicitation Program requirements, which is more particularly described as a "Self-developed Proposal" in subsection (d)(2)(iv) of these guidelines, who directly support the Self-developed Proposal.
- (11) "Renewable energy certificate" means a tradable instrument that is equal to one

megawatt hour of electricity or equivalent energy supplied by a renewable energy facility.

- (12) "Renewable energy facility" means an electric generating facility that uses renewable energy resource(s) as its primary source of fuel, has a nameplate capacity rating of 75 MW or less.
- (13) "Renewable energy resource" is as defined as provided in Section 58-39-120(F).
- (14) "T&D Sub-Team" means those members of the Evaluation Team responsible for assessing the impacts of proposals on the electrical utility's transmission and distribution systems and assigning any system upgrade costs attributable to each proposal pursuant to section (d)(3)(iii) of these guidelines. The T&D Sub-Team shall be designated in writing to the Independent Administrator and shall have no communication, either directly or indirectly, with the other members of the Evaluation Team or a market participant concerning any proposal, except through the Independent Administrator, from the date on which the draft Competitive Solicitation documents are issued by the Independent Administrator until the Competitive Solicitation is deemed closed.

**(b) Selection and Role of Independent Administrator.**

- (1) In advance of any Competitive Solicitation under these guidelines, the Commission shall invite and consider comments and recommendations from the electrical utilities, ORS, and other interested persons, including market participants, regarding the selection of the Independent Administrator. In addition to the requirements in these guidelines, the Commission may establish additional minimum qualifications and requirements for the Independent Administrator.
- (2) Any person requesting to be considered for approval as the Independent Administrator shall be required to disclose any financial interest involving the electrical utilities implementing Competitive Solicitation Programs or any market participant, including, but not limited to, all substantive assignments for electrical utilities, Affiliate(s), or market participants during the preceding three (3) years.
- (3) In advance of the initial Competitive Solicitation(s), the Commission shall select and approve the Independent Administrator. From the date the Independent Administrator is selected, no market participant shall have any communication with the Independent Administrator or the electrical utility pertaining to the Competitive Solicitation, the RFP documents and process, or the evaluation process or any related subjects, except as those communications are specifically allowed by these guidelines.
- (4) The Independent Administrator will be retained by the electrical utility for the duration of the Competitive Solicitation under a contract to be filed with the Commission at least one hundred twenty (120) days prior to the electrical utility's Competitive Solicitation(s). The Independent Administrator shall remain subject to ongoing Commission oversight.
- (5) The Independent Administrator's duties shall include:

- (i) Monitor compliance with Competitive Solicitation Program requirements.
  - (ii) Review and comment on draft Competitive Solicitation Program filings, plans, and other documents.
  - (iii) Facilitate and monitor permissible communications between the electrical utilities' Evaluation Team and other participants in the Competitive Solicitations.
  - (iv) Develop and publish the Competitive Solicitation Program Methodology that shall ensure equitable review between an electrical utility's Self-developed Proposal(s) as addressed in subsection (d)(2)(iv) and proposals offered by third-party market participants.
  - (v) Receive and transmit proposals.
  - (vi) Independently evaluate the proposals.
  - (vii) Monitor post-proposal negotiations between the electrical utilities' Evaluation Team(s) and participants who submitted winning proposals.
  - (viii) Evaluate the electrical utility's Self-developed Proposals.
  - (ix) Provide an independent certification to the Commission that all electrical utility and third party proposals were evaluated under the published Competitive Solicitation Program methodology and that all proposals were treated equitably through the Competitive Solicitation(s).
- (6) Prior to the initial Competitive Solicitation, but on or before the date determined by Commission order, the Independent Administrator shall develop and publish the Competitive Solicitation Program Methodology. Prior to developing and publishing the Competitive Solicitation Program Methodology, the Independent Administrator shall meet with the Evaluation Team(s) to share evaluation techniques and practices. The Independent Administrator shall also meet with the Evaluation Team(s) at least sixty (60) days prior to each subsequent Competitive Solicitation to discuss the efficacy of the Competitive Solicitation Program Methodology and whether changes to the Competitive Solicitation Program Methodology may be appropriate based upon the anticipated contents of the next Competitive Solicitation. If the Competitive Solicitation allows for electrical utility self-build options or Affiliate proposals, the Independent Administrator shall ensure that if any non-publicly available transmission or distribution system information is used in preparing proposals by the electrical utility or Affiliate(s), such information is made available to third parties that notified the Independent Administrator or their intent to submit a proposal in response to the that Competitive Solicitation.
- (7) The Independent Administrator shall maintain the IA Website to support administration and implementation of the Competitive Solicitation Program and shall post the Competitive Solicitation documents, the Competitive Solicitation Program Methodology, participant FAQs, and any other pertinent documents on the IA Website.
- (8) In carrying out its duties, the Independent Administrator shall work in coordination with the Evaluation Team(s) with respect to Competitive Solicitation Program implementation and the Competitive Solicitation proposal evaluation process in the

manner and to the extent as more specifically provided in subsection (d) of these guidelines.

- (9) If the Independent Administrator becomes aware of a violation of any Competitive Solicitation Program requirements, the Independent Administrator shall immediately report that violation, together with any recommended remedy, to the Commission.
- (10) The Independent Administrator's fees shall be funded through reasonable proposal fees collected by the electrical utility. The electrical utility shall be authorized to collect proposal fees up to \$10,000 per proposal to defray its costs of evaluating the proposals. In addition, the electrical utility may charge each participant an amount equal to the estimated total cost of retaining the Independent Administrator divided by the reasonably anticipated number of proposals. To the extent that insufficient funds are collected through these methods to pay of the total cost of retaining the Independent Administrator, the electrical utility shall pay the balance and subsequently charge the winning participants in the Competitive Solicitation.

(c) **Communications Between Market Participants.**

- (1) From the date an electrical utility announces a Competitive Solicitation, until the Independent Administrator declares the Competitive Solicitation closed, there shall be no communications between Market Participants regarding the substantive aspects of their proposals or between the electrical utility and Market Participants. Such communications shall be conducted through the Independent Administrator as permitted by this subsection.
- (2) The Evaluation Team or the Independent Administrator may request further information from any Market Participant regarding its proposal during the process of evaluating and selecting proposals. These communications shall be conducted through the Independent Administrator and shall be conducted in a manner that keeps confidential the identity of the market participant.
- (3) On or before the date an electrical utility announces a Competitive Solicitation, the Proposal Team shall be separately identified and physically and operationally separated from the Evaluation Team for purposes of all activities that are part of the Competitive Solicitation process. The names and job titles of each member of the Proposal Team and the Evaluation Team shall be reduced to writing and submitted to the Independent Administrator.
- (4) There shall be no communications, either directly or indirectly, between the Proposal Team and Evaluation Team during the Competitive Solicitation regarding any aspect of the Competitive Solicitation process, except (i) necessary communications as may be made through the Independent Administrator and (ii) negotiations between the Proposal Team and the Evaluation Team for a final power purchase agreement after the Proposal Team has been selected by the electrical utility as a winning proposal. The Evaluation Team will have no direct or indirect

contact or communications with the Proposal Team or any other participant, except through the Independent Administrator as described further herein, until such time as a winning proposal or proposals are selected by the electrical utility and negotiations for a final power purchase agreement(s) have begun.

- (5) At no time shall any information regarding the Competitive Solicitation process be shared with any Market Participant, including the Proposal Team, unless the information is shared with all competing participants contemporaneously and in the same manner.
- (6) Within fifteen (15) days of the date an electrical utility announces a planned Competitive Solicitation, each member of the Proposal Team shall execute an acknowledgement that he or she agrees to abide by the restrictions and conditions contained in subsection (c) of these guidelines for the duration of the Competitive Solicitation. If the Proposal Team's proposal is selected by the electrical utility after completion of the Competitive Solicitation, each member of the Proposal Team shall then also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (c) of these guidelines. The electrical utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission.
- (7) Should any Market Participant, including an Affiliate or electrical utility's Proposal Team, attempt to contact a member of the Evaluation Team directly, such participant shall be directed to the Independent Administrator for all information and such communication shall be reported to the Independent Administrator by the Evaluation Team member. Within ten (10) days of the date that the Independent Administrator issues the Competitive Solicitation, each Evaluation Team member shall execute an acknowledgement that he or she agrees to abide by the conditions contained in subsection (c) of these guidelines for the duration of the Competitive Solicitation. If the Proposal Team's proposal is selected by the electrical utility after completion of the Competitive Solicitation, the Evaluation Team shall also execute an acknowledgement that he or she has met the restrictions and conditions contained in subsection (c). The electrical utility shall provide these acknowledgements to the Independent Administrator and shall file the acknowledgements with the Commission.

**(d) Competitive Solicitation Structure and Process.**

- (1) Identification of Market Participants; Design of Competitive Solicitation.
  - (i) Prior to the initial Competitive Solicitation, the electrical utility shall provide the Independent Administrator with a list of potential market participants that have expressed interest, in writing, in participating in the Competitive Solicitation or have participated in recent renewable energy resource solicitations issued by the electrical utility. The Independent Administrator shall publish notice of the draft Competitive Solicitation on the IA Website, and prepare the list of potential participants to whom notice

of the upcoming Competitive Solicitation will be sent.

- (ii) The electrical utility shall prepare an initial draft of the Competitive Solicitation guidelines and documents, including RFP procedures, evaluation factors, credit and security obligations, a pro forma power purchase agreement, the Avoided Cost Rate against which proposals will be evaluated, and a planned schedule for completing the Competitive Solicitation and selecting winning proposals. No later than ninety (90) days prior to the planned issue date of the Competitive Solicitation, the electrical utility shall provide the initial draft of the Competitive Solicitation guidelines and documents to the Independent Administrator for posting on the IA Website.
- (iii) The evaluation factors included in the Competitive Solicitation guidelines shall identify all economic and noneconomic factors to be considered by the Independent Administrator in its evaluation of proposals. In addition to the guidelines, a pro forma power purchase agreement containing all expected material terms and conditions shall be included in the Competitive Solicitation documents provided to the Independent Administrator and shall be filed with the Commission for approval at least thirty (30) days prior to the planned Competitive solicitation issuance date.
- (iv) The Independent Administrator, in coordination with the electrical utility, shall conduct a pre-issuance market participants' conference to publicly discuss the draft Competitive Solicitation guidelines and documents with potential market participants. Potential participants may submit written questions or recommendations to the Independent Administrator regarding the draft Competitive Solicitation guidelines and documents in advance of the market participants' conference. All such questions and recommendations shall be posted on the IA Website. The Independent Administrator shall have no private communication with any potential participants regarding any aspect of the draft Competitive Solicitation documents.
- (v) Based on the input received from potential participants, and on its own review of the draft Competitive Solicitation documents, the Independent Administrator shall submit a report to the electrical utility, at least sixty (60) days prior to the planned Competitive Solicitation issuance date, detailing comments and the Independent Administrator's recommendations for changes to the Competitive Solicitation documents, if any. This report shall also be posted on the IA Website for review by potential participants.
- (vi) At least ten (10) days prior to the planned Competitive Solicitation issuance date, the electrical utility shall submit its final version of the Competitive Solicitation documents to the Independent Administrator to be posted on the IA Website. At any time after the Competitive Solicitation is issued, through the time winning proposals are selected by the electrical utility, the schedule for the solicitation may be modified upon mutual agreement of the electrical utility and the Independent Administrator, with equal notice provided to all market participants, or upon approval by the Commission. Any modification to the Competitive Solicitation schedule will be posted to the

IA Website.

- (2) Issuance of Competitive Solicitation.
  - (i) The Independent Administrator shall transmit the final Competitive Solicitation to potential market participants via the IA Website. Upon issuance of the final Competitive Solicitation, the only communications permitted prior to submission of proposals shall be conducted through the Independent Administrator. Market Participants' questions and the Independent Administrator's responses shall be posted on the IA Website, but, to the extent possible, shall be posted in a manner that the identity of the participant remains confidential. To the extent such questions and responses contain competitively sensitive information that a particular participant deems to be a trade secret, this information may be redacted by the participant.
  - (ii) The electrical utility shall not communicate with any Market Participant regarding the RFP Process, the content of the Competitive Solicitation documents, or the substance of any potential response by a participant to the RFP; provided, however, the electrical utility shall provide timely, accurate responses to the Independent Administrator's request for information regarding any aspect of the Competitive Solicitation documents or the Competitive Solicitation process.
  - (iii) Market Participants shall submit proposals pursuant to the solicitation schedule contained in the Competitive Solicitation, and in the format required by the Independent Administrator to facilitate the evaluation and selection of proposals. The Independent Administrator shall have access to all proposals and all supporting documentation submitted by Market Participants in the course of the Competitive Solicitation process.
  - (iv) If the electrical utility wishes to consider an option for full or partial ownership of a renewable energy facility as part of the Competitive Solicitation, the utility must submit its construction proposal (Self-developed Proposal) to provide all or part of the capacity requested in the Competitive Solicitation to the Independent Administrator at the time all other proposals are due. Once submitted, the Self-developed Proposal may not be modified, except in the event that the electrical utility demonstrates to the satisfaction of the Independent Administrator that the Self-developed Proposal contains an error and that correction of the error will not be unduly harmful to the other market participants, the electrical utility may correct the error. Persons who have participated or assisted in the preparation of the Self-developed Proposal on behalf of the electrical utility's Proposal Team in any way may not be a member of the Affiliate's Proposal Team, nor communicate with the Affiliate's Proposal Team during the RFP Process about any aspect of the RFP Process.
- (3) Evaluation and Selection of Proposals. The evaluation and selection of proposals received in response to a Competitive Solicitation shall proceed in two steps as set forth in this subdivision, and shall be subject to the Commission's oversight as



provided in these guidelines.

- (i) In step one, the Independent Administrator shall evaluate all proposals based upon the Competitive Solicitation evaluation factors using the Competitive Solicitation Program Methodology. The Independent Administrator shall conduct this evaluation in an appropriate manner designed to ensure equitable review of all proposals based on the economic and noneconomic factors contained in the Competitive Solicitation evaluation factors. As a result of the Independent Administrator's evaluation, the Independent Administrator shall, subject to the provisions of subsection (d)(3)(ii) of these guidelines, eliminate proposals that fail to meet the Competitive Solicitation evaluation factors and then develop and deliver to the electrical utility's T&D Sub-Team a list of proposals ranked in order from most competitive to least competitive. The Independent Administrator shall redact from the proposals included in the list delivered to the electrical utility any information that identifies the market participant which submitted the proposal and any information in the proposal that is not reasonably necessary for the utility to complete step two of the evaluation process, including economic factors such as cost and pricing information.
- (ii) As a part of the step one evaluation, the Independent Administrator may, in its commercially reasonable discretion, allow a Market Participant to modify or clarify its proposal to cure a non-conformance that would otherwise require elimination of the proposal, and may consult with the electrical utility's Evaluation Team to determine whether a proposal meets the Competitive Solicitation Evaluation factors. In consulting with the Evaluation Team, the Independent Administrator shall maintain the anonymity of the Market Participant that submitted the proposal. The Independent Administrator shall document the reasons for the elimination of a proposal.
- (iii) In step two, the electrical utility's T&D Sub-Team shall assess the system impact of the proposals in the order ranked by the Independent Administrator and assign any system upgrade costs attributable to each proposal included in the list provided by the Independent Administrator. The T&D Sub-Team shall conduct this assessment in a reasonable manner, with oversight by the Independent Administrator, and in parallel with the Independent Administrator's allowing modification or clarification of proposals and consultation with the Evaluation Team, as provided in (d)(3)(ii), if applicable. The electrical utility's T&D Sub-Team shall provide its assessment of system upgrade costs to the Independent Administrator, who shall first determine whether such system upgrade costs have been appropriately assigned and then determine whether the original ranking of proposals needs to be modified to recognize the system upgrade costs assigned to each proposal. The Independent Administrator shall also eliminate any proposal where the assigned system upgrade costs combined with the Market Participant's bid price cause the total cost of the proposal to exceed the applicable avoided cost cap. If no re-ranking is needed and the Independent Administrator has concluded its evaluation pursuant to

(d)(3)(ii) of these guidelines, if applicable, then the electrical utility shall select the winning proposals in accordance with subsection (iv) below. If the Independent Administrator modifies the original ranking as result of the assignment of system upgrade costs or the elimination of a proposal, it shall deliver to the T&D Sub-Team of the electrical utility such revised list of proposals ranked in order from most competitive to least competitive (with Market Participant information redacted as described in step one) and the assignment of system upgrade costs described in this subsection shall be performed again by the T&D Sub-Team and provided to the Independent Administrator, who will re-rank the proposals as necessary. This process shall continue on an iterative basis, as directed by the Independent Administrator, until the Independent Administrator determines that the total generating capacity sought in the Competitive Solicitation is satisfied in the most cost-effective manner after taking into account the assignment of system upgrade costs through this step two.

- (iv) Upon completion of step two and determination by the Independent Administrator of the final ranking of the proposals, the Independent Administrator shall deliver to the Evaluation Team of the electrical utility the final ranked list of proposals. The electrical utility shall select proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the Competitive Solicitation is satisfied, and the Independent Administrator shall provide the electrical utility with the identity of the Market Participants and proposals so selected. Upon publication of the list of proposals selected, the Independent Administrator shall declare the Competitive Solicitation closed. The electrical utility shall proceed to execute contracts (where applicable) with each of the Market Participants who submitted proposals that were selected. If a Market Participant selected pursuant to subsection (iv) fails to execute a contract during the contracting period identified in the Competitive Solicitation, the electrical utility shall provide to the Independent Administrator a short and plain explanation regarding such failure and the Independent Administrator, after consultation with the Evaluation Team, shall determine whether the next-ranked proposal or proposals should be selected in order to procure the total generating capacity sought in the Competitive Solicitation. For the avoidance of doubt, the Evaluation Team shall not have access to the identifying information of any such proposals prior to the Independent Administrator's determination. If no additional proposals are selected, the capacity amount associated with the proposal of the market participant that failed to execute a contract shall be included in a subsequent Competitive Solicitation; provided that if, no further Competitive Solicitations are scheduled, the electrical utility shall take such action as is directed by the Commission.

**(e) Competitive Solicitation Program Power Purchase Agreements**

- (1) Prior to holding a Competitive Solicitation, and on or before the date set by

Commission order, the Independent Administrator shall post the pro forma contract to be utilized during the Competitive Solicitation on the IA Website to inform market participants of terms and conditions of the competitive solicitation. The electrical utility shall also file the pro forma contract with the Commission and identify any material changes to the pro forma contract terms and conditions from the contract used in the electrical utility's most recent Competitive Solicitation.

- (2) Each electrical utility shall include appropriate language in all pro forma contracts (i) providing the procuring electrical utility rights to dispatch, operate, and control the solicited renewable energy facilities in the same manner as the utility's own generating resources; (ii) defining limits and compensation for resource dispatch and curtailments; (iii) defining environmental and renewable energy attributes to include all attributes that would be created by renewable energy facilities owned by the electrical utility; and (iv) prohibiting the seller from claiming or otherwise remarketing the environmental and renewable energy attributes, including the renewable energy certificates being procured by the electrical utility under power purchase agreements entered into under the Competitive Solicitation Program. An electrical utility may propose redefining its rights to dispatch, operate, and control solicited renewable energy facilities, including defining limits and compensation for resource dispatch and curtailments, in pro forma contracts to be offered in future Competitive Solicitations. In addition, an electrical utility may, within a single Competitive Solicitation, propose multiple pro forma contracts that offer different rights to dispatch, operate, and control renewable energy facilities.
- (3) No later than 30 days after an electrical utility executes a power purchase agreement pursuant to a Competitive Solicitation, the public utility shall file the power purchase agreement with the Commission.
- (4) Upon expiration of the term of a power purchase agreement procured pursuant to a Competitive Solicitation, a renewable energy facility owner other than the electrical utility, may enter into a new contract with the electrical utility or obtain a new contract based on an updated market based mechanism, as determined by the Commission. If market-based authorized revenue for a generating facility owned by the electrical utility and procured pursuant to these guidelines was initially determined by the Commission to be in the public interest, then the electrical utility shall similarly be permitted to continue to receive authorized revenue based on an updated market based mechanism, as determined by the Commission. Any market based rate for either utility owned or non-utility owned facilities shall not exceed the electrical utility's avoided cost rate established by the Commission. If the electrical utility's initial proposal includes assumptions about pricing after the initial term, such information shall be made available to the Independent Administrator and all participants.